

Myers & Myers

Attorneys at Law

9800 Bren Road East, Suite 290
Hopkins, Minnesota 55343

Thomas C. Myers, IV
T. Corwin Myers, V
Attorneys at Law

Telephone: (952) 935-3425
Website: www.BergMyersLaw.com

Summary of Estate Planning Tools

Included below are descriptions of some of the planning tools we use to help you achieve your goals. Please contact us with any questions or to learn more.

SIMPLE WILLS

A *Simple Will* directs the dispensation of real and personal property and nominates a ***Personal Representative*** to handle your affairs after your death. This dispensation includes specific gifts of money and personal property, as well as the remainder of assets after debts and bills are paid. While often times this dispensation is directed to spouses/partners or children, a Will can direct these to any named individual.

Minnesota law requires a Will to be signed and witnessed by two individuals. Having a Will does not avoid probate, but it ensures that your wishes are followed and may simplify the steps required to probate your estate. If assets are titled in such a manner that there is no probate necessary, your Will can still be a good tool showing your intent for the dispensation of personal effects and how you would have liked your estate administered.

REVOCABLE LIVING TRUSTS

The major benefit of a *Revocable Living Trust* over a *Will* is to avoid probate, but it also provides confidentiality and useful arrangements to manage assets of an incapacitated person. While a Will does not become effective until death, a

Revocable Living Trust is established when it is signed. Normally the client appoints him or herself *Trustee* so total control is retained. If the client dies or becomes incapacitated, a *Successor Trustee* is named to manage and administer the assets without the expense and time required by court involvement.

A critical second step is to “*fund the trust*”—transfer the title or ownership of assets from the client’s personal name to the Trustee of the Trust. Only assets titled in the Trust are covered by its provisions, and failure to properly fund the trust can result in having to probate other assets. Furthermore, there are various types of Revocable Trusts which, when properly drafted, help minimize taxes owed at death.

POWER OF ATTORNEY

A *Power of Attorney* appoints a financial agent (also known as an “*attorney-in-fact*”) to handle financial, legal and business affairs in the event of incapacity or other situations when the principal needs or wants assistance. A Minnesota Statutory Short Form Power of Attorney is commonly used because it is recognized by financial institutions and others. Several questions on the form address the scope of the agent’s authority.

While a Power of Attorney may be extremely helpful and avoid the requirement of a Court appointed Conservator, care must be used in *selecting responsible and trustworthy agents* to manage your assets without Court supervision. While agent selection should be thoughtful, it is important to note, that any actions taken by the attorney-in-fact that are not in your best interest will open that individual to both potential civil and criminal liability.

There are two types of Powers-of-Attorney, the Minnesota Statutory Short Form Power-of-Attorney, and a Durable Power-of-Attorney. The Minnesota Short Form was created by the Minnesota Legislature to ensure that a uniform standard was established so a third party relying on the document will recognize the power conferred by the document. The powers granted by the Short Form are very broad and range from real estate transactions, personal banking, fiduciary transactions, claims and litigation, beneficiary transactions, and other instances where your attorney-in-fact stands in your shoes.

A Durable Power-of-Attorney can encompass the same powers as the Statutory Short Form. They can also be crafted to expand those powers to grant authority to

act on your behalf for non-personal business interests, certain trust management authorities, or other instances where you would be acting as an agent rather than as an individual. The downside to the Durable Power-of-Attorney when compared to the Statutory Short Form is that there is no guarantee that it will be recognized by a third party when it is presented. We often find that a Statutory Short Form Power-of-Attorney is all that is necessary for most of our estate planning clients.

HEALTH CARE DIRECTIVE

If a person is incapacitated or otherwise unable to make and communicate their own health care decisions, a Health Care Directive is an essential document. The Directive names the *Health Care Agent(s)* appointed to make decisions including whether to perform surgery or other procedures, the selection of health care providers and the location of care. It permits health care providers to share confidential medical information with the agents. The Directive may also contain instructions or guidelines for the agents to follow in making decisions. While the focus is often on end-of-life decisions, the Directive is also critical in other situations involving incapacity, such as a coma or Alzheimer disease.

LIST OF PERSONAL PROPERTY

It is very important for some persons to designate who receives specific items of tangible personal property after their death. Minnesota law permits a Will to incorporate a separate written list by reference. The List only needs to be dated, signed, and kept with the Will. It does not require the execution formalities of a Will so it can be revised periodically without incurring legal expense. Selected items such as jewelry, antiques, art and collections (other than coin and stamp collections) are commonly listed with a description and name. The remainder of tangible personal property passes under the provisions of the Will. All of the Wills that we draft include a List of Personal Property that can be completed at a client's leisure.

TRANSFER ON DEATH DEED

In Minnesota, a homeowner or property owner can execute and file a Transfer on Death Deed that transfers their property into someone else's name upon their death. If executed correctly, the person who is designated as the recipient on the deed only needs to take a certified copy of the owner's death certificate and an

Affidavit of Identity and Survivorship to the county recorder's office to have the property re-titled into their name. This can be a very important probate avoidance tool as a home is often the most valuable asset in an estate. When combined with proper beneficiary, pay-on-death, and transfer-on-death designations, on bank, retirement, and investment accounts, many estates can minimize the potential for a probate proceeding.

If you have any questions about these, or other estate planning matters, please feel free to contact our office and we will be happy to help.

-Berg Myers Law